

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America) CR. NO.: 3:02-548-CMC
)
v.)
) **OPINION and ORDER**
Christopher Toby Hayes,)
)
Defendant,)
_____)

This matter is before the court on Defendant's motion to reconsider under Rule 59(e) of the Federal Rules of Civil Procedure. ECF No. 3677. The Government has not responded to Defendant's motion.

The Fourth Circuit Court of Appeals has interpreted Rule 59(e) of the Federal Rules of Civil Procedure to allow the court to alter or amend an earlier judgment: ““(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.”” *Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (quoting *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998)). “Whatever may be the purpose of Rule 59(e) it should not be supposed that it is intended to give an unhappy litigant one additional chance to sway the judge.” *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625 (S.D. Miss. 1990). Neither of the first two circumstances applies in this matter. Therefore, the court believes Defendant seeks to “correct a clear error of law or prevent manifest injustice.”

Defendant maintains that this court erred in dismissing his previously-filed motion for relief under 28 U.S.C. § 2255 as a second or successive motion. Defendant contends that the issue presented in his motion, that *DePierre v. United States*, ___ U.S. ___, 131 S. Ct. 2225 (2011), was

a case that recognized new rights and is applicable to Defendant's case such that he should be afforded relief under § 2255, was not available to him and therefore he could not have presented it in his previous § 2255 motion. However, regardless of the applicability of *DePierre*, a motion filed by Defendant under § 2255 would be a second or successive such motion. *See* D.S.C. Cr. No. 3:02-548, *United States v. Hayes*, ECF Nos. 3408 (Motion to Vacate Under 28 U.S.C. § 2255) (filed Mar. 22, 2011) & 3570 (Opinion and Order dismissing Motion to Vacate with prejudice).

Defendant's motion for reconsideration is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON McGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
June 22, 2012